

§ 2634.403

5 CFR Ch. XVI (1–1–16 Edition)

Independent trustee means a trustee who meets the requirements of § 2634.405 of this subpart and who is approved by the Director under this subpart.

Interested party means an employee, the employee's spouse, and any minor or dependent child, in any case in which the employee, spouse, or minor or dependent child has a beneficial interest in the principal or income of a trust proposed for certification under this subpart or certified under this subpart.

Qualified blind trust means a trust in which the employee, his spouse, or his minor or dependent child has a beneficial interest and which:

- (1) Is certified pursuant to § 2634.407 by the Director;
- (2) Has a portfolio as specified in § 2634.406(a);
- (3) Follows the model trust document prepared by the Office of Government Ethics; and
- (4) Has an independent trustee as defined in § 2634.405.

Qualified diversified trust means a trust in which the employee, his spouse, or his minor or dependent child has a beneficial interest and which:

- (1) Is certified pursuant to § 2634.407 by the Director;
- (2) Has a portfolio as specified in § 2634.406(b);
- (3) Follows the model trust document prepared by the Office of Government Ethics; and
- (4) Has an independent trustee as defined in § 2634.405.

Qualified trust means a trust described in the Ethics in Government Act of 1978 and this regulation and certified by the Director under this subpart. There are two types of qualified trusts, the qualified blind trust and the qualified diversified trust.

§ 2634.403 General description of trusts.

(a) *Qualified blind trust.* (1) The qualified blind trust is the most universally adaptable qualified trust. An interested party may put most types of assets (such as cash, stocks, bonds, mutual funds or real estate) into a qualified blind trust.

(2) In the case of a qualified blind trust, 18 U.S.C. 208 and other Federal

conflict of interest statutes and regulations apply to the assets that an interested party transfers to the trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than \$1,000. Because the employee knows what assets he or she placed in the trust and there is no requirement that these assets be diversified, the possibility still exists that the employee could be influenced in the performance of official duties by those interests.

(b) *Qualified diversified trust.* (1) An interested party may put only readily marketable securities into a qualified diversified trust. In addition, the portfolio must meet the diversification requirements of § 2634.406(b)(2).

(2) In the case of a qualified diversified trust, the conflict of interest laws do not apply to the assets that an interested party transfers to the trust. Because the assets that an interested party puts into this trust must meet the diversification requirements set forth in this regulation, the diversification achieves “blindness” with regard to the initial assets.

(3) *Special notice for Presidential appointees—(i) In general.* In any case in which the establishment of a qualified diversified trust is contemplated with respect to an individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee. There is a section on the public financial disclosure form, the OGE Form 278, for the individual to indicate whether he or she intends to create a qualified diversified trust.

(ii) *Applicability.* Paragraph (b)(3)(i) of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

(c) *Conflict of interest laws.* In the case of each type of trust, the conflict of interest laws do not apply to the assets

that the independent trustee or any other designated fiduciary adds to the trust.

§ 2634.404 Summary of procedures for creation of a qualified trust.

(a) *Consultation with the Office of Government Ethics.* Any employee, spouse, or minor or dependent child (or that party's representative) who is interested in setting up a qualified blind or qualified diversified trust must contact the Office of Government Ethics prior to beginning the process of creating the trust. The Office of Government Ethics is the only entity that has the authority to certify a qualified trust. Because an interested party must propose, for the approval of the Office of Government Ethics, an entity to serve as the independent trustee, the Office of Government Ethics will explain the requirements that an entity must meet in order to qualify as an independent trustee. Such information is essential in order for the employee to interview entities for the position of independent trustee. The Office of Government Ethics will also explain the restrictions on the communications between the interested parties and the proposed trustee.

(b) *Selecting an independent trustee.* After consulting with the Office of Government Ethics, the interested party may interview entities who meet the requirements of § 2634.405(a) in order to find one to serve as an independent trustee. At an interview, the interested party may ask general questions about the institution, such as how long it has been in business, its policies and philosophy in managing assets, the types of clients it serves, its prior performance record, and the qualifications of the personnel who would be handling the trust. Because the purpose of a qualified trust is to give an independent trustee the sole responsibility to manage the trust assets without the interested party having any knowledge of the identity of the assets in the trust, the interested party may communicate his or her general financial interests and needs to any institution which he or she interviews. For example, the interested party may communicate a preference for maximizing income or long-term capital gain or for balancing safety of capital

with growth. The interested party may not give more specific instructions to the proposed trustee, such as instructing it to maintain a specific allocation between stocks and bonds, or choosing stocks in a particular industry.

(c) *The proposed independent trustee.*

(1) The entity selected by an interested party as a possible trustee must contact the Office of Government Ethics to receive guidance on the qualified trust program. The Office of Government Ethics will ask the proposed trustee to submit a letter describing its past and current contacts, including banking and client relationships, with the employee, spouse, and minor or dependent children. The extent of these contacts will determine whether the proposed trustee is independent under the Act and this regulation.

(2) In addition, an interested party may select an investment manager or other fiduciary. Other proposed fiduciaries selected by an interested party, such as an investment manager, must meet the independence requirements.

(d) *Approval of the independent trustee.* If the Director determines that the proposed trustee meets the requirements of independence, the Director will approve, in writing, that entity as the trustee for the qualified trust.

(e) *Confidentiality agreement.* If any person other than the independent trustee or designated fiduciary has access to information that must not be shared with an interested party or that party's representative, that person must file a Confidentiality Agreement with the Office of Government Ethics. Persons filing a Confidentiality Agreement must certify that they will not make prohibited contacts with an interested party or that party's representative.

(f) *Drafting the trust instrument.* The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. There are two annexes to the model trust document: An annex describing any current, permissible banking or client relationships between any interested parties and the independent trustee or other fiduciaries and an annex listing the initial assets that the interested